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Paper No. 11

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In re Application of	:	
Corisis et al.	:	
Application No. 09/152,659	:	ON PETITION
Filed: 14 September, 1998	:	
Attorney Docket No. MICT-0039-D2	:	

This is a decision on the petitions (a) under 37 CFR 1.181 filed on 18 January, 2002 (certificate of mailing date 20 December, 2001) to withdraw the holding of abandonment and, (b) under 37 CFR 1.137(b)[1] filed on 15 January, 2002 to revive the above identified application.

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on 25 January, 2001, for failure to submit a timely reply to the non-final Office action mailed on 24 October, 2000, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed 22 May, 2001, and remailed to counsel's new address on 13 June, 2001.

Petitioners assert that the non-final Office action mailed on 24 October, 2000, was never received. A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[2] This showing may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

A review of the application file indicates that the 24 October, 2000, Office action was mailed to the correspondence address specified in the Power of Attorney by Assignee deposited with the application papers on 14 September, 1998, which address does not correspond to petitioners' current address.[3] A review of the written record indicates no irregularity in the mailing of the

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[2]See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

[3]A change of correspondence address was filed in the present application on 13 June, 2001. To the extent that the correspondence address in parent Application No. 08/978,397 was previously changed, the change of correspondence address must be identified in the divisional application to ensure that the Office recognizes the change of correspondence address in the divisional application. See MPEP 201.06(e).

Office action, and, in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to the correspondence address of record. Under *Delgar v. Schulyer*,[4] this presumption may be overcome by a showing that the Office communication was not received at the correspondence address of record. Consequently, to rely upon *Delgar*, petitioners must establish that the 24 October, 2000, Office action was not received at the correspondence address provided by the assignee in the Power of Attorney filed on 14 September, 1998.

While the showing of record indicates that the petitioner did not receive the 24 October, 2000 Office action, the record is silent as to the address at which the docket record indicates mail being received. To the extent that the docket record indicates mail being received at petitioners' current address, the showing of record establishes only that the petitioners did not receive the Office action at their current location. However, the Office action was not mailed to petitioners' current address. Rather, the Office action was mailed to the correspondence address specified by the assignee in the Power of Attorney. As such, it is material that the petitioner has demonstrated that the Office action was not received at their current location. Petitioners must establish that the Office action was not received at the correspondence address of record at the time the action was mailed. Otherwise, the record would indicate that the Office action may have been lost after receipt at the correspondence address of record rather than lost in the mail. Since petitioners have not made the requisite showing, the petition is dismissed. Petitioners are responsible for promptly notifying the Office of a change in the correspondence address.[5]

As the showing of record is insufficient to merit withdrawal of the holding of abandonment, the petition under 37 CFR 1.181 is **dismissed.**

The petition under 37 CFR 1.137(b) is **granted.**

The application is being forwarded to Technology Center 2800 for further processing.

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[4] 172 USPQ 513 (D.D.C. 1971).

[5] See MPEP 601.03.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

D Wood

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United States Patent and Trademark Office

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Paper No. 11

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In re Application of	)	
CORISIS et al.	)	
Application No. 09/152,659	)	DECISION ON PETITION
Filed: September 14, 1998	)	
For: Integrated Circuit Package Support System	)	

This is a decision on the petition filed on June 27, 2001, and supplemented on December 20, 2001, to withdraw the holding of abandonment of the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the Office action mailed on October 24, 2000. A Notice of Abandonment was mailed on May 22, 2001.

Petitioner states that the October 24, 2000 Office action was not received by counsel and attests to the fact that a search of the file jacket and docket records indicates that the Office action was not received. The petition includes a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. Petitioner requests that the holding of abandonment be withdrawn and a new Office action be mailed.

A review of the application file indicates that the October 24, 2000 Office action was mailed to the correspondence address specified in the Power of Attorney by Assignee deposited with the application papers on September 14, 1998, which address does not correspond to petitioner's current address.[1] A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to the correspondence address of record. Under *Delgar v. Schulyer,*

[1]A change of correspondence address was filed in the present application on June 13, 2001. To the extent that the correspondence address in parent application 08/978,397 was previously changed, the change of correspondence address must be identified in the divisional application to ensure that the Office recognize in the divisional application the change of correspondence address. See MPEP 201.06(c).

172 USPQ 513 (D.D.C. 1971), this presumption may be overcome by a showing that the Office communication was not received at the correspondence address of record. Consequently, to rely upon *Delgar*, petitioner must establish that the October 24, 2000 Office action was not received at the correspondence address provided by the assignee in the Power of Attorney filed on September 14, 1998.

While the showing of record indicates that the petitioner did not receive the October 24, 2000 Office action, the record is silent as to the address at which the docket record indicates mail being received. To the extent that the docket record indicates mail being received at petitioner's current address, the showing of record establishes only that the petitioner did not receive the Office action at his current location. However, the Office action was not mailed to the petitioner's current address. Rather, the Office action was mailed to the correspondence address specified by the assignee in the Power of Attorney. As such, it is immaterial that the petitioner has demonstrated that the Office action was not received at his current location. Petitioner must establish that the Office action was not received at the correspondence address of record at the time the action was mailed. Otherwise, the record would indicate that the Office action may have been lost after receipt at the correspondence address of record rather than lost in the mail. Since the petitioner has not made the requisite showing, the petition is dismissed.

Petitioner may wish to consider filing a petition to the Commissioner under 37 CFR § 1.137 requesting that the application be revived. See MPEP § 711.03(c).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision.

Any questions regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (703) 308-7502.

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RS/HP/jc